



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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MAY - 9 2003

Paper No. 9

In re Application of :
Peter Guthmann *et al* : DECISION ON PETITION
Application No. 09/654,149 :
Filed: September 1, 2000 :
Attorney Docket No. 3916/59156-082 :

The papers filed by facsimile transmission on April 17, 2003 and styled as "Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a)" have been referred to the undersigned for treatment as a petition under 37 CFR 1.181 to withdraw the holding that this application stands technically abandoned for failure to file a proper reply to the final rejection mailed on October 16, 2002. No fee is required for the petition, and none has been charged.

The petition is denied.

This petition is considered pursuant to 37 CFR 1.181 because petitioners urge that this application is not in fact abandoned by reason of the timely filing of a reply to the final rejection. Because a reply to a final rejection must comply with 37 CFR 1.113 and 37 CFR 1.116 in order to be considered to be a proper reply, the copy of the reply attached to the petition was forwarded to the examiner for review. The examiner reports that the reply does not, *prima facie*, place the application in condition for allowance on the existing record, and would not have been entered had it previously been placed before the examiner.

Pursuant to 37 CFR 1.113 and 1.116, and as discussed in MPEP §§ 714.12 and 714.13, applicants have an affirmative duty to file a reply to a final rejection that complies with the regulations. Applicants must monitor the status of such replies that may be filed, and may not rely upon the absence of a response to any reply that has been filed as being an indication that the reply has been entered. Accordingly, there is no basis for holding that this application does not presently stand abandoned.

The application is being forwarded to the examiner for preparation and mailing of a Notice of Abandonment. Petitioners' remedy appears to be a petition pursuant to 37 CFR 1.137. Petitioners should note that such petition must be accompanied by a proposed reply to the final rejection, and that the proposed reply must comply with 37 CFR 1.113 and 1.116. Any request for reconsideration of this decision must be filed within two months. See 37 CFR 1.181(f).

PETITION DENIED.

E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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